IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1430 of 2007

Bharkavi .. Petitioner

Vs

1. The District Collector &
   District Magistrate
   Cuddalore district
   Cuddalore.

2. The Secretary to Government
   Prohibition and Excise Department
   Government of Tamilnadu
   Fort St. George, Chennai 9. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.S.Saravanan

For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenu Bakiyaraj, husband of the petitioner, as the said authority arrived at the subjective satisfaction that the said detenu is a Goonda and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

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2.1. The order of detention dated 17.5.2007 came to be passed by the second respondent on the basis of the ground case in Crime No.153 of 2007 on the file of Neyveli Township Police Station for the offences punishable under Sections 147, 148, 341, 294(b), 323, 336, 394, 506(ii) and 307 IPC, complaint of which was given by one Selvabalan. On 19.4.2007, when the complainant was standing alone on Neyveli Township bazaar junction road, the detenu and his associates suddenly surrounded him and shouted that how dare he would stand as a witness in Jothi Rajendiran murder case and that nobody would mind if he was killed by them and with intention to cause his death, they joined together and beat him. The detenu forcibly took away Rs.310/- from the shirt pocket of the complainant. The public seeing the atrocious activities of the detenu and his associates ran for safer places out of fear of danger. Taking advantage of the panic situation, the detenu and his associates escaped from the spot. Based on the complaint, the case was taken up for investigation and the detenu was arrested.

2.2. Apart from the above, the detaining authority also took note of three adverse cases pending against the detenu in Crime Nos.169/2005, 331/2005 and 8/2007 on the file of Neyveli Township Police Station for the offences punishable under Sections 147, 148, 324, 326, 506(ii), 307, 302 and 120-B IPC.

2.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order, passed the impugned order.

3. Challenging the said detention, the petitioner has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to direct the respondents to produce the records pertaining to the detention of the detenu, by order of detention passed by the second respondent in Ref.No.C3/D.O/21/2007, dated 17.5.2007, to set aside the same and to direct the respondents to cause production of body and person of the detenu before this Court and to set him at liberty.

4. Heard Mr.S.Saravanan, learned counsel for the petitioner and Mr.N.R.Elango, learned Additional Public Prosecutor for the respondents.

5. The only contention advanced by the learned counsel for the petitioner is that there is considerable delay in considering the representation and the same has rendered the detention illegal.

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6.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

6.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

6.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22(5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

6.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

6.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental

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right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

7. In the instant case, the impugned order of detention came to be passed on 17.5.2007. A representation was made to the Government and the same was received by it on 28.6.2007. Remarks were called for from the detaining authority on 28.6.2007 and the remarks were received from the detaining authority by the Government on 5.7.2007. The file was considered by the Under Secretary and Additional Secretary on 6.7.2007. The Hon'ble Minister rejected the representation of the detenu on 9.7.2007, however the rejection letter was prepared on 16.7.2007, viz., after a delay of five working days, excluding two public holidays. The delay in considering the representation, as indicated above, was highlighted by the learned counsel for the petitioner. There is no convincing reply on behalf of the State for the said delay. We find some force as well as substance in this contention. There is absolutely no explanation for this delay.

8. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

9. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

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10. The delay which stands unexplained would fatalise the detention attracting Article 22 of the Constitution of India and therefore, the petition must succeed and the same is ordered as prayed for. The detention order dated 17.5.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his custody is required in connection with any other case.

ATR

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The District Collector &
   District Magistrate
   Cuddalore district
   Cuddalore.

2. The Secretary to Government
   Prohibition and Excise Department
   Government of Tamilnadu
   Fort St. George, Chennai 9.

3. The Superintendent
   Central Prison
   Cuddalore.

4. The Joint Secretary
   to the Government of Tamil Nadu,
   Public (Law and Order) Department,
   Fort St George, Chennai 9.

5. The Public Prosecutor,
   High Court, Madras.

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+ 1 cc to Mr. S. Saravanan, Advocate SR No. 72674

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